IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17999 of 2004

Date of decision24 .5.2007

Mahinder Pal Gupta .. petitioner

Versus

Punjab State Electricity Board and another .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE ARVIND KUMAR

PRESENT: Mr.Pritam Saini, Advocate for the petitioner

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing letter dated 13.5.2004 (Annexure P.13) which is reply to the legal notice sent by the petitioner and rejecting his prayer for promotion as Assistant Engineer on regular basis retrospectively from the date the petitioner had completed six months training by exempting him from passing the Departmental Accounts Examination.

The petitioner has been working on the post of Divisional Head Draftsman and was promoted on 28.4.1985 as Circle Head Draftsman (Annexure P.1). He was confirmed as such w.e.f. 1.1.1996. For onward promotion to the post of Assistant Engineer, the Departmental Promotion Committee requisitioned his detailed particulars. He was posted on 2.11.1998 as Circle Head Draftsman/ trainee Assistant Engineer and his name figured at serial No. 32 of the list. In his promotion order, certain conditions were imposed including condition nos. 11 and 12 which reads as under:

> " 11. The officials from sr. no.31 to 35 have been posted as CHD/ Trainee subject to passing of Departmental Accounts Examination as laid down in o/o no.32/REG. Dated 4.8.1997.
>
> 12. The officials at sr. no.31 to 35 would be on training for a period of six months and they would work in their own pay scale. They would be considered for promotion after receipt of work and conduct and passing of DAE."

It is thus obvious that the petitioner was required to pass the Departmental Accounts Examination. He appeared in the same but was not able to qualify. On 12.5.1999 he made a representation that being more than 55 years of age and the fact that he was to retire on 31.8.1999 he may be granted exemption from the condition of passing Departmental Accounts Examination. He cited the example of one Sewa Singh Virdi who was more than 50 years of age and was granted exemption. It is appropriate to mention that the petitioner had completed six months period of training and was working in his own pay scale. He was to be considered for regular promotion after the receipt of report regarding his work and conduct. The petitioner made repeated representations for grant of exemption from passing Departmental Accounts Examination. However, he attained superannuation on 31.8.1999. After his retirement he continued making representations which culminated in service of legal notice on 28.3.2004 (Annexure P.12). In reply to the legal notice, respondent Board declined the request made by the petitioner by observing that in the absence of passing the Departmental Accounts Examination, he could not be promoted on regular basis as Assistant Engineer. The relevant part of the reply to legal notice reads as under:

" Your client Sh. Mohinder Pal Gupta was posted as CHD/Trainee vide o/o no. 1108/BEG dated 2.11.198 with the following conditions:

i. The officials from sr. no.31 to 35 have been posted as CHD/ Trainee subject to passing of Departmental Accounts Examination as laid down in o/o no.32/REG. Dated 4.8.1997.

ii) The officials at sr. no.31 to 35 would be on training for a period of six months and they would work in their own pay scale. They would be considered for promotion after receipt of work and conduct and passing of DAE.

Your client Sh. Mohinder Pal Gupta could not clear the DAE till 31.8.99. So, his services cannot be regularised without passing the DAE. The request of your client for giving exemption from passing the DAE received through Secretary Power Pb. Govt. Chandigarh and the case for grant of exemption from passing the DAE to those CHDs who have attained the age of 54 years was placed before the Board vide Memorandum No.25/ENG-398 dated 14,.8.2000 and was rejected by the Board.

The case of Sh. Sewa Singh Virdi has no relevancy with the case of your client as he was exempted from passing the DAE by the competent authority.

Although your client had completed 6 months training satisfactorily but he could not pass the DAE as per condition no.11 and 12 of office order No. 1108/BEG dated 2.11.98, as such your client cannot be promoted as AE on regular basis

from 16.5.1999."

After hearing learned counsel, we are of the considered view that this petition lacks merit and is thus liable to be dismissed. The service conditions of the petitioner are regulated by the Punjab State Electricity Board Service of Engineers (Electrical) Regulations 1965 (for brevity 'the Regulations) . Regulation 2(i)(a) of the Regulations contemplate that the members of Drawing Establishment were not to be considered for promotion as Assistant Engineer (Electrical) without their passing the Departmental Accounts Examination (Electrical) prescribed for engineering subordinates. The Regulation 2(i)(a) of the Regulations as reproduced in the written statement reads as under:

> " The members of Drawing Establishment (not below the rank of Draftsman) shall also not be considered for promotion as AE/Electrical unless they have passed the DAE/Electrical prescribed for Engineering Subordinates.
>
> The members of Drawing Establishment(not below the rank of Draftsman) shall also not be considered for promotion as AE/Civil unless, they passed the DAE prescribed for Engineering Subordinates (Civil)"

A perusal of the aforesaid Regulation shows that passing of Departmental Accounts Examination is mandatory. The use of word 'shall' ordinarily must be read as must. It is equally well settled that even if there is regulation providing for relaxation of qualification then such a concession of relaxation cannot be claimed as a matter of right. In that regard reliance may be placed on Rajlakshmiah v. State of Mysore AIR 1967 SC 993. The afore-mentioned view has been followed by a Division

Bench of this Court in the case of A.K.Kapur v. Punjab State Tubewell Corporation (CWP No. 18539 of 1997 decided on 6.8.1997). There is thus no merit in the petition.

For the reasons afore-mentioned, this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Arvind Kumar)
Judge

24.5.2007
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